

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

THOMAS NESBITT, )  
Plaintiff, ) 4:72cv12  
vs. ) MEMORANDUM AND ORDER  
CHARLES WOLFF, JR., )  
Defendant. )

This matter is before the court on filing nos. 199 and 200, in which the plaintiff, Thomas Nesbitt, a prisoner in the custody of the Nebraska Department of Correctional Services ("DCS"), objects to, seeks reconsideration of, and requests a hearing regarding this court's Order (filing no. 198) regarding the \$255 appellate filing fee assessed by the Eighth Circuit Court of Appeals in connection with Mr. Nesbitt's appeal in this case.

In filing no. 191 dated January 14, 2005, the Eighth Circuit assessed the fee, and in filing no. 194, the Eighth Circuit stated: "Appellant Nesbitt's two motions to reconsider the assessment of the court's filing fee in the judgment of January 14, 2005, have been considered by the court and are denied." This court has no power whatsoever to depart from the Eighth Circuit's decision. Therefore, the question of Mr. Nesbitt's liability for the full \$255 appellate filing fee is closed and will not be discussed or reheard by this court.

On the other hand, the plaintiff asks for leave to pay the fee out of his DCS release savings account fund instead of from his inmate trust account. This court does not oppose the plaintiff's request. However, the court will not order DCS to comply with the plaintiff's request. The plaintiff may negotiate with the appropriate DCS official(s) regarding from which of his accounts the filing fee installments shall be withdrawn, and he will have to accept whatever such official(s) decide. Other than the court's neutrality on the matter of the plaintiff's accounts, filing nos. 199 and 200 are denied.

SO ORDERED.

DATED this 4<sup>th</sup> day of August, 2005.

BY THE COURT:

s/ *Richard G. Kopf*  
United States District Judge